

Article 9
Conditional Uses and Variances
(Amended 6/18/87)

Section 901. Conditional Uses

901-1. CONDITIONAL USE PERMIT REQUIRED (Amended 11/6/89; 10/4/93)

A building, structure or parcel of land may be employed for a conditional use, as defined in Article 3, if the Planning Board finds that the use meets the standards of Section 901-4, any special standards of the zoning ordinance, and is of one of the following four types of conditional uses:

1. The conditional use is specifically listed in the regulations governing the zoning district in which the use is proposed; or
2. A parcel of land in single ownership as of the effective date of this Ordinance is transected by a zoning boundary line, in which case extensions penetrating no more than 100 feet into a more restrictive zone may be approved as a conditional use in accordance with Section 404-2; or
3. A change from one non-conforming use to another use equally or more appropriate to the zoning district and meeting the standards of Section 503-4 and this Section.
4. Certain conversions of buildings to multifamily use as described in Section 412-6.

901-2. APPLICATION FOR CONDITIONAL USE PERMIT

1. The applicant shall submit building and site plans in ten (10) copies, drawn to a scale of not less than one inch equals twenty feet (1" = 20'). The building plans shall show at a minimum the first floor plan and all elevations, with indication of the proposed construction material. The site plan shall include the following information.
 - a. A map of the site with reference to surrounding areas and existing street locations.
 - b. The name and address of the owner and conditional use permit applicant, together with evidence of sufficient right, title or interest in the premises to permit the applicant to undertake the use for which conditional use permit approval has been requested.
 - c. The names and addresses of the owners of all properties within two hundred (200) feet of the property in question when the property is located in the R-3, business (B) or MU zones and within six hundred (600) feet when the property in question is located in the conservation zone, any industrial district or the R-

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- 1, R-2 and R-4 districts, as shown by the most recent tax records of all municipalities in which such properties lie. (Amended 10/3/11)
- d. A plan of the area showing lot line dimensions, applicable zone or zones, and the normal high water mark, if applicable.
 - e. Location of all existing and proposed buildings and structures, streets, easements, driveways, entrances and exits on the site and within one hundred (100) feet thereof.
 - f. All setbacks from bodies of water and lot lines.
 - g. All existing physical features on the site and within two hundred (200) feet of the site, including streams, watercourses and existing woodlands. Soil conditions as reflected by a medium intensity survey (such as wetlands, rock ledge, and areas of high water table) shall be shown, and the Planning Board may require a high intensity soils survey where necessary. The applicant shall provide, as part of the application, a narrative and sketch sufficient to describe trees and other vegetation located on the site. The Board may require mapping of trees proposed to be preserved as part of site and landscaping plans presented for approval.
 - h. Topography showing existing and proposed contours at five (5) foot intervals for slopes averaging five percent (5%) or greater and at two (2) foot intervals for land of lesser slope. A reference benchmark shall be clearly designated. Where variations in the topography may affect the layout of buildings and roads, the Planning Board may require that the topographic maps be based on an on-site survey.
 - i. Parking, loading and unloading areas shall be indicated with dimensions, traffic patterns, access aisles and curb radii.
 - j. Improvements such as roads, curbs, bumpers and sidewalks shall be indicated with cross sections, design details and dimensions.
 - k. Location and design of existing and proposed stormwater systems, sanitary waste disposal systems and potable water supply, and methods of solid waste storage and disposal.
 - l. Landscaping and buffering plan showing what will remain and what will be planted, indicating botanical and common names of plants and trees, dimensions, approximate time of planting and maintenance plans.
 - m. Lighting details indicating type of fixtures, location, radius and intensity of light.
 - n. Location, dimensions and details of signs.
 - o. Proposed use of all floor area.
2. The application for conditional use permit review for business, commercial and industrial uses shall also include:

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- a. A written description of the proposed operations in sufficient detail to indicate the degree to which the operations will create traffic congestion, noise, toxic or noxious matter, vibration, odor, heat, glare, air pollution, waste, and other objectionable effects, along with engineering and architectural plans for mitigating such effects.
 - b. The proposed number of shifts to be worked and the maximum number of employees of each shift.
 - c. A list of all hazardous materials to be hauled, stored, used, generated or disposed of on the site, and any pertinent state or federal permits required.
3. Where the Planning Board finds that, due to special circumstances of a particular plan, the submission of required exhibits is not necessary or is inappropriate because of the nature of the proposed development, it may waive such requirements subject to appropriate conditions. The Planning Board may require submission of such additional information as it deems necessary for proper review. A written request for such a waiver shall accompany the application.
4. The purpose of these provisions is to ensure that all required information is presented to the Planning Board when it initially reviews an application. However, an application is not deemed to be complete until declared to be so by vote of the Planning Board, which may, in any case, request additional information and materials beyond those described in subsection 1.

901-3. HEARING REQUIRED (Amended 10/4/93)

1. For each application for a conditional use permit, the Planning Board shall conduct a public hearing.
2. The Planning Board shall cause public notice to be posted and published in both the city building and at least one newspaper of circulation in the area, of any public hearing which the Board shall conduct, indicating the property involved, the nature of the appeal, and the time and place of the public hearing.
3. The Board shall also cause to have notified all property owners of within six hundred (600) feet of the property when the applicant's property is located in the Conservation District, any Industrial District or R-1, R-2, and R-4 Districts and within two hundred (200) feet when the applicant's property is located in the R-3 District or any Business District. The Board shall cause a list of such property owners to be drawn off from the Assessor's records, and such notices to property owners shall be sent by mail at least seven (7) days prior to the date set for the public hearing.
4. The Planning Board shall not continue hearings to a future date except for good cause. Written notice of the decision of the Board shall be sent to the appellant and

the Building Inspector.

5. (Reserved)
6. If the development proposal under conditional use permit review is also subject to site plan review under Article XI of this ordinance, conditional use permit review and site plan review may occur simultaneously.

901-4. STANDARDS FOR A CONDITIONAL USE PERMIT

It is the Applicant's burden to establish that the proposed use or activity meets each of the following standards:

1. The proposed use will meet the definition and specific requirements set forth in this Ordinance and will be in compliance with applicable state or federal laws.
2. The proposed use will provide adequate access to the site, and to the buildings on the site, for emergency vehicles and will not create fire safety hazards.
3. The proposed exterior lighting will not create hazards to motorists traveling on adjacent public streets, is adequate for the safety of occupants or users of the site and will not damage the value and diminish the usability of adjacent properties.
4. The provisions for buffers and on-site landscaping will provide adequate protection to neighboring properties from detrimental features of the development.
5. The proposed use will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare or other cause.
6. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will not create hazardous and unsafe conditions.
7. The proposed use will not have a significant detrimental effect on the value of adjacent properties that could be avoided by reasonable modification of the plan.
8. The design of the site will not result in significant flood hazards or flood damage and will be in conformance with applicable flood hazard protection requirements.
9. Adequate provision has been made for disposal of wastewater and solid waste and for the prevention of ground or surface water contamination.
10. Adequate provision has been made to control erosion or sedimentation.
11. Adequate provision has been made to handle storm water run-off and other drainage problems on the site.
12. The proposed water supply will meet the demands of the proposed use and for fire protection purposes.
13. Adequate provision has been made for the transportation, storage and disposal of hazardous substances and materials as defined by state law.
14. The proposed use will not have an adverse impact on significant scenic vistas or on significant wildlife habitat that could be avoided by reasonable modification of the

plan.

15. The use will not cause unreasonable safety hazards for pedestrians, cyclists, and operators of motor vehicles and will not result in a decrease in level of service below LOS D at study area intersections or the project driveway during the design hour. (Levels of service are defined by the latest edition of the *Highway Capacity Manual*, published by the Transportation Research Board. The design hour is defined as the 30th highest hour of the year for the intersection.) However, (1) at signalized intersections where the level of service is already below LOS D; or (2) at signalized intersections predicted to drop below LOS D where physical improvements cannot be made to attain LOS D, or, (3) at unsignalized intersections, where physical improvements cannot be made to improve the level of service to LOS D and provided that warrants for a traffic signal are not met, or signal installation is not desirable; the Board may approve the application if it finds that an adequate level of safety can be attained through imposing conditions of approval such as upgrades in signalization, one-way driveways, prohibiting certain turning movements, construction of turning lanes, sidewalks, bicycle paths, or other improvements, or through a program of Transportation Demand Management measures. (Amended 4/30/07)
16. Existing off-site ways and traffic facilities can safely and conveniently accommodate the increased traffic generated by the development as far away from the development as the effects of the development can be traced with reasonable accuracy.
(Amended 10/4/93)

901-5. ADDITIONAL STANDARDS IN SHORELAND AREAS

For conditional use permit applications within RP, SR, and SO Districts, the Planning Board, in addition to the standards for a conditional use permit, shall find that the proposed conditional use:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as in accordance with the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities in a

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Marine Business and Residential District;

8. Will avoid problems associated with flood plain development and use; and
9. Is in conformance with the provisions of Section 7.1-3 Land Use Standards;
10. If located in a structure, the structure is located in an approved subdivision and will not violate any other local ordinance or regulation or any State law which Saco is responsible for enforcing. (Amended 4/3/02)

901-6. CONDITIONS OF APPROVAL

The Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance.

Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation, specified sewage disposal and water supply facilities, landscaping and planting screens, period of operation, operational controls, professional inspection and maintenance, sureties, deed restrictions, restrictive covenants, type of construction, or any other reasonable conditions necessary to fulfill the purposes of this Ordinance.

901-7. LIMITS ON CONDITIONAL USE PERMITS

Work or construction, or occupancy if no construction is involved shall commence within twelve (12) months of the Planning Board's issuance of a conditional use permit. If work or occupancy is not commenced within this period, the conditional use permit shall be null and void. The deadline may be extended for one additional six (6) month period by the Planning Board upon the written request of the applicant. The written request for an extension must be submitted before the date of expiration of the conditional use permit. After the conditional use permit has expired or an extension denied by the Planning Board, the applicant may reapply for a conditional use permit at any time without prejudice.

The Planning Board shall approve the request for an extension unless the Board has become aware of one of the following:

- a. additional information that indicates that the plan does not meet the conditional use standards;
- b. failure to meet a condition of approval;
- c. an amendment in the Zoning Ordinance that prohibits or alters the proposed conditional use.

901-8. REAPPLICATION

If the Planning Board shall deny a conditional use a second request of a similar nature shall not be brought before the Board within two years from the date of the first request, unless in the opinion of the majority of the Board, substantial new evidence can be

brought forward, or unless the Board finds, in its sole judgment, that an error of law or misunderstanding of facts has been made, or unless amendment has been made to the Zoning Ordinance which changes the status, circumstances, or conditions of the matter which was brought before the Board.

901-9. DURATION OF CONDITIONAL USE PERMIT

Provided all conditions and standards of approval are met, including Section 901-7, a conditional use permit issued under this Article authorizes only the particular activity for which it was issued and based upon a plan for such activity which was approved by the Planning Board. The conditional use permit shall automatically expire and cease to be of any force or effect if such use is discontinued for a period of 12 consecutive months. (Amended 9/18/89; 10/4/93)

901-10. APPEALS

A decision by the Planning Board on an application for a conditional use permit may be appealed in writing to the Zoning Board of Appeals within 30 days of the Planning Board's decision. The Board of Appeals may reverse the Planning Board's decision only upon a finding that there has been an error of law or that the facts leading to the decision of the Planning Board were erroneous. The review shall not be de novo.

Appeals of decisions on minor conditional uses shall be made to the Planning Board within 30 days of the date of the decision. This appeal may include new evidence and testimony.

901-11. NON-CONFORMANCE

Conditional uses are permitted in buildings which are legally non-conforming in respect to the standards of Table 412-1 of this ordinance upon a finding by the Planning Board that this non-conformance does not cause the use to violate any of the conditional use standards or special standards of Article 7 for certain conditional uses. (Amended 10/4/93)

901-12. MINOR CONDITIONAL USES

In order to process applications more efficiently, certain conditional uses, due to the limited nature of the proposed use, may be reviewed by the Planning Office, as authorized in M.R.S.A. Title 30-A § 4353. Only uses that meet all of the following applicability standards may be reviewed as minor conditional uses:

1. Applicability

This article shall apply to:

- a. Home occupations in which there is no point of purchase for retail merchandise

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at the home. Phone and mail order businesses, wholesale businesses and other similar businesses may be reviewed as minor conditional uses.

- b. Home occupations in which the required number of parking spaces for all uses on the lot does not exceed four (4) spaces.
- c. Home occupations in which there are not significant exterior alterations to the building or site.
- d. Two family dwellings (Amended 2/19/02)

2. Administration

a. Application Contents

An application for a minor conditional use shall include four (4) copies of the information required under Section 901-2.1, except the items required under paragraphs c, g, h and j, which may be required by the Planning Office if deemed warranted.

b. Notice and Public Comment

Upon receipt of an application for minor conditional use, the Planning Office shall send a notice of the application, including the name of applicant, address of the applicant, the nature and address of the proposed use, to all property owners within two hundred (200) feet. The notice shall also include a deadline for comment on the application, to be ten (10) calendar days from the date of the notice.

c. Time Frame for Decisions

The Planning Office shall act upon all applications for minor conditional uses, approval, or referral to the Planning Board, within five (5) days of the close of the public comment period.

3. Criteria for Approval

Minor Conditional Use applications shall be approved by the Planning Office unless the proposed use does not satisfy the approval criteria in Section 901-4, or other relevant sections of the Zoning Ordinance, or other local, State and federal laws. If in the opinion of the Planning Office, an application does not meet the approval criteria, then the application shall be referred to the Planning Board for a full conditional use review.

4. Planning Board Jurisdiction

The Planning Board shall review any application for a minor conditional use upon a determination by the Planning Office that the potential impacts from a proposed use warrant a public hearing before the Planning Board. Upon referral to the Planning

Board, the applicant shall submit a full application for conditional use.

Section 902. Variances (Amended 11/6/89; 6/17/95; 11/19/07)

902-1. APPLICABILITY

1. A variance, as defined in Article III, is authorized for only the following space and bulk requirements, and for Certificates of Appropriateness, governed by Section 413, Historic Preservation:
 - a) minimum lot area;
 - b) lot area per dwelling unit;
 - c) minimum street frontage;
 - d) minimum yards and setbacks;
 - e) maximum lot coverage;
 - f) maximum height;
 - g) on lots divided by district boundaries, the extension of uses allowed in the less restricted zone more than fifty (50) feet into the more restricted zone;
 - h) the parking standards in Section 708 of this ordinance;
 - i) the curb cut standards in Section 709-1 of this ordinance;
 - j) the sign standards of Section 707, except for decisions by the Planning Board under Section 707-5-3. (Amended 6/17/95)
 - k) the private road dimensional standards found in Section 724-9 A and 724-9 I of this ordinance. However, this variance shall only be granted if the applicant can present a letter from the Saco Fire Department stating that the variance will result in a private road which is adequate for public safety purposes. (Amended 3/15/04)
2. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconforming structures in the particular zone or adjoining zones. (Amended 11/6/89)

902-2. APPLICATION FOR A VARIANCE

Application to the Zoning Board of Appeals for a variance shall be submitted to the Code Enforcement Officer on forms provided for that purpose, accompanied by a fee as may be established by the City Council for such applications. The application shall clearly state the location of the property, the relief sought, and, the reason(s) for requesting the variance.

(Amended 11/6/89)

902-3. STANDARDS

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Prior to voting to grant a variance, the Zoning Board of Appeals shall review the application and find that the following standards have been met:

1. That a literal interpretation of the requirement of this Ordinance will impose an undue hardship on the property owner. The term "undue hardship" shall mean specifically that:
 - a) the land in question cannot yield a reasonable return unless a variance is granted; and
 - b) the need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood; and
 - c) the hardship is not the result of action taken by the applicant or a prior owner.
 - d) that the granting of the variance will not alter the essential character of the locality.
2. No variance shall be granted merely to relieve inconvenience to the property owner or for economic considerations alone.
3. Any variance granted by the Board of Appeals shall be the minimum variance from the terms of the Ordinance as will relieve the hardship pleaded.

902-4. VARIANCE IN SHORELAND AREAS (Amended 6/29/09)

A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

Prior to voting to grant a variance within the mandated shoreland area, the Zoning Board of Appeals shall, in addition, find that the proposed variance:

1. Will not result in unsafe or unhealthful conditions;
2. Will not result in erosion or sedimentation;
3. Will not result in water pollution;
4. Will not result in damage to spawning grounds, fish aquatic life, bird and other wildlife habitat;
5. Will conserve shoreland vegetation;
6. Will conserve visual points of access to waters as viewed from public facilities;

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7. Will conserve actual points of public access to waters;
8. Will conserve natural beauty; and
9. Will avoid problems associated with flood plain development and use.

The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision.

902-5. CONDITION OF APPROVAL

The Zoning Board of Appeals may impose such conditions on its approval of a variance as are necessary, in its judgment, to protect surrounding property owners or the city from adverse impacts resulting from the variance.

902-6. LIMITS ON VARIANCES

A variance granted by the Board of Appeals shall expire if the work or change involved is not commenced within six (6) months of the date on which the variance was granted or if the work or change is not substantially completed within a twelve (12) month period, unless extended by the Board.

902-7. REAPPLICATION

If the Board of Appeals shall deny a variance, a second request of a similar nature shall not be brought before the Board within two years from the date of the first request, unless in the opinion of a majority of the Board, substantial new evidence can be brought forward, or unless the Board finds, in its sole and exclusive judgment, that an error of law or misunderstanding of facts has been made, or unless amendment has been made to the Zoning Ordinance which changes the status, circumstances, or conditions of the matter which was appealed.

902-8. PRIOR WORK

Any construction activity commenced prior to the granting of a required variance shall be a violation of this Ordinance.

902-9. SPECIAL STANDARDS FOR CERTAIN VARIANCES FOR SINGLE FAMILY DWELLINGS (Amended 7/10/95)

1. Pursuant to 30A M.R.S.A. subsection 4353, 4-B, the Zoning Board of Appeals may also grant setback variances for single-family detached dwellings under the alternate definition of "undue hardship" below. Variances granted under this section are limited to the following:
 - A. Single-family detached dwellings that are the primary year-round

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- residence of the petitioner.
 - B. Variances in front yard or side yard and rear yard as outlined in Table 412-1, Lines D and E, not to exceed 20 percent of the setback requirement.
 - C. Variances granted under this subsection shall not cause the area of the dwelling to exceed the maximum lot coverage permitted in the district as outlined in Table 412-1, Line H.
 - D. Variances granted under this subsection shall be the minimum variance needed.
 - E. Variances granted under this subsection shall not cause the house which receives the variance to be within 15 feet of an occupied building on the adjacent lot.
2. Prior to voting to grant a variance, the Zoning Board of Appeals shall review the application and find that all of the following standards defining “undue hardship” for this subsection only have been met:
- A. The need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood;
 - B. The granting of a variance will not alter the essential character of the locality;
 - C. The hardship is not the result of action taken by the applicant or a prior owner;
 - D. The granting of the variance will not substantially reduce or impair the use of abutting property; and
 - E. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.